

MEMORANDUM OF LAW

DATE: July 27, 1994

TO: Councilmember Harry Mathis

FROM: City Attorney

SUBJECT: URM Ordinance

This memorandum of law has been prepared in response to your memorandum dated June 10, 1994, (copy attached) in which you requested our opinion on the effect the enactment of Senate Bill No. 1988 ("SB 1988") may have on what is commonly referred to as the City's "URM" ordinance, set forth in Municipal Code section 91.8801 et seq. ("Earthquake Hazard Reduction Ordinance"). The Earthquake Hazard Reduction Ordinance was adopted by the City Council on November 9, 1992, to establish a program to mitigate the potential hazards that result from the effects of earthquakes on buildings that have unreinforced masonry bearing walls ("URM Buildings"). The Earthquake Hazard Reduction Ordinance applies to URM Buildings constructed prior to March 24, 1939.

SB 1988 amends Health and Safety Code sections 17922.1 and 18941.6 to essentially require local governments to incorporate the "building standards" found within Appendix Chapter 1 of the Uniform Code for Building Conservation of the International Conference of Building Officials ("Appendix Chapter 1") into local programs established to strengthen potentially hazardous URM Buildings. Prior to SB 1988, a local agency did not have to comply with Appendix Chapter 1 if the local agency adopted a program for mitigation of potentially hazardous buildings on or before January 1, 1993.F

Appendix Chapter 1 consists of Sections A101 through A111 and Tables A-1-A through A-1-F. Section A101 provides that the purpose of Appendix Chapter 1 is to establish minimum standards for structural seismic resistance safety for URM Buildings.

The City of San Diego established its program when the Earthquake Hazard Reduction Ordinance was adopted in 1992.

The Earthquake Hazard Reduction Ordinance already incorporates the technical, material and design requirements found within Sections A103 through A110 of Appendix Chapter 1,

except for Table No. A-1-E. (Municipal Code Section 91.8810). The passage of SB 1988 would mean that the City would be required to follow the standards set forth in Table No. A-1-E.

Table No. A-1-E would require the City to classify URM Buildings based on occupant load. Currently, the City classifies buildings based on occupancy. However, it is my understanding from speaking to Research Engineer, Bronson Rideout, from the Development Services Department, that compliance with Table A-1-E will not have a significant effect on the City.

However, a more important concern is whether the City would also be required to comply with Section A102 of Appendix Chapter 1. This section, entitled "Scope," provides that "the provisions of this chapter ... shall apply to existing buildings having at least one unreinforced masonry bearing wall."

Presently, the City's Earthquake Hazard Reduction Ordinance applies only to URM Buildings which were built before March 1939. If the City is required to comply with Section A102 it would mean that the City's mitigation program would need to be greatly expanded to apply to all existing URM Buildings. This, according to Mr. Rideout, would have an enormous impact on the City.

However, SB 1988 only requires local agencies to incorporate the "building standards" of Appendix Chapter 1. Health and Safety Code section 18909 defines "building standard," in part, as the following:

"Building standard means any rule, regulation, order or other requirement, including any amendment or repeal of that requirement, which specifically regulates, requires, or forbids the method of use, properties, performance, or types of materials used in the construction, alteration, improvement, repair or rehabilitation of a building, structure...."

Moreover, the phrase "Building Standard" has been interpreted to mean provisions that are technical or substantive in nature, not administrative type provisions. *Baum Electric Co. v. City of Huntington Beach*, 33 Cal. App. 3d 573 (1973). See also 55 Ops. Cal. Atty. Gen. 157, 161.

SB 1988 could be interpreted to mean that local agencies are not required to comply with the provisions of Section A102. Section A102 is procedural in nature, describing the "scope" in which Appendix Chapter 1 is to be applied. It could be reasonably inferred that, by using the phrase "Building Standard," the Legislature only intended that local agencies incorporate the technical provisions of Appendix Chapter 1 which pertain to materials and methods of construction.

Of course, we do not know with any degree of certainty whether a court would agree with our contention that the provisions of Section A102 are only administrative in nature. However, even if local agencies were required to comply with Section A102, we could still argue that local agencies do not have to incorporate standards that are found to be inapplicable either due to local conditions or the result of an approved study. In particular, SB 1988 provides that any ordinance adopted before January 1, 1993, may provide an exception from the standards of Appendix Chapter 1 if a study has been adopted on or before that date which describes the effect of the exception.

In the present case, the City adopted its mitigation program after an extensive study was conducted by Innis-Tennebaum Architects, Inc. for the Building Inspection Department, entitled "A Report on Socioeconomic Impacts," dated February 1991. This study found that the socioeconomic impacts that would result from retrofitting a large majority of URM Buildings was prohibitive. (Page 55 of the Report.) As a result of this study, the City established an earthquake mitigation program that applied only to URM Buildings constructed before 1939. Therefore the City does not have to incorporate the standard described in Section A102 because the City found this Section to be inapplicable due to the result of the above described study.

In summary, as you can see, SB 1988 is poorly worded and subject to several interpretations. Therefore, we advise that the City recommend that this ambiguity be clarified by revising SB 1988 to provide that cities are required to incorporate only the Building standards found within Sections A105 - A110 of Appendix Chapter 1. Also, we will request that the Legislative Counsel of California provide us with their interpretation of SB 1988.

You also requested that we review a letter written by Mr. Crawford addressed to Senator Alfred Alquist and dated June 27, 1994. In this letter Mr. Crawford states that as the result of having to comply with all of Appendix Chapter 1, which includes Table No. A-1-E, the City of San Diego will be compelled "to require complete compliance to full seismic retrofit of all elements of buildings." We do not understand the basis for Mr. Crawford's comments. Mr. Crawford appears to be referring to Table A-1-F. However, the City currently complies with Table A-1-F. In addition, as stated above, the Development Services Department does not believe that complying with Table No. A-1-E will have a significant impact on the City.

We will be contacting the Legislative Counsel for their

opinion on SB 1988 and will let you know of their reply. Should you have any further questions, please do not hesitate to call.

JOHN W. WITT, City Attorney

By

Ann Y. Moore

Deputy City Attorney

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cc Tina Christiansen

Pete Lopez

Bronson Rideout

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